

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Thomas Rao,

Case No. 0:19-cv-00923-DTS

Plaintiff,

v.

St. Jude Medical S.C., Inc., a Minnesota
corporation; and Abbott Laboratories, an
Illinois corporation,

Defendants,

AND

St. Jude Medical S.C., Inc.,

Counterclaim Plaintiff,

v.

Thomas Rao,

Counterclaim Defendant.

**PLAINTIFF'S REVISED PROPOSED BREACH OF CONTRACT CLAIM
INSTRUCTION ON PRIOR BREACH**

INSTRUCTION NO. ____

Plaintiff's Proposal:

PLAINTIFF THOMAS RAO'S BREACH OF CONTRACT CLAIM

***PRIOR BREACH*²⁸**

If you find in favor of the plaintiff under Instruction _____, the defendants' prior breach precludes the defendants from using any later breach by the plaintiff to enforce the employment agreement's non-competition provision.

*Defendants' Proposal:*²⁹

²⁸ See *W. Nat'l Mut. Ins. Co. v. Prospect Foundry*, 2018 WL 1787687, at *2 (Minn. Ct. App. Apr. 16, 2018) ("Generally, a party who first breaches a contract cannot use the other party's later breach to avoid liability.") (citing *Space Ctr., Inc. v. 451 Corp.*, 298 N.W.2d 443, 451 (Minn. 1980)); *Rao v. St. Jude Medical S.C., Inc.*, 631 F. Supp. 3d 678, 706 (D. Minn. 2022) (citing *Webb Pub. Co. v. Fosshage*, 426 N.W.2d 445, 449 (Minn. Ct. App. 1988); *Edin v. Josten's, Inc.*, 343 N.W.2d 691, 694 (Minn. Ct. App. 1984) (citing *Rao v. Rao*, 718 F.2d 219 (7th Cir. 1983)). Plaintiff's position is that this instruction is consistent with the law.

²⁹ Plaintiff understands that Defendants will be drafting a counterpoint to Plaintiff's instruction.

Dated: October 10, 2023

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